

310 NLRB No. 163

**Presidential Sheet Metal, Inc. and Local No. 17,  
Sheet Metal Workers International Association,  
Insurance and Annuity Funds. Case 1-CA-  
29406**

**CORRECTION**

On April 5, 1993, the National Labor Relations Board issued a Decision and Order in the above-captioned proceeding.

Please substitute the attached for your copy to reflect the inadvertent omission of paragraph 1(b) and relettering of old paragraph 1(b) to new paragraph 1(c). The notice is also amended to reflect the additional paragraph.

Dated: June 23, 1993

**Presidential Sheet Metal, Inc. and Local No. 17,  
Sheet Metal Workers International Association,  
Insurance and Annuity Funds. Case 1-CA-  
29406**

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

Upon a charge filed by Local No. 17, Sheet Metal Workers International Association, Insurance and Annuity Funds, on May 28, 1992, the General Counsel of the National Labor Relations Board issued a complaint on August 28, 1992, against Presidential Sheet Metal, Inc., the Respondent, alleging that it has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act. On October 2, 1992, and January 22, 1993, respectively, the Respondent filed an answer and an amended answer to the complaint.

On March 1, 1993, the General Counsel filed a Motion to Transfer Proceeding and for Summary Judgment with the Board. On March 3, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

The complaint alleges, inter alia, that: Local 17, Sheet Metal Workers International Association, AFL-CIO, the Union, is the certified collective-bargaining representative of a unit of the Respondent's employees; the Union and the Respondent have had successive collective-bargaining agreements; since on or about November 28, 1991, the Respondent has failed to make certain contractually required payments; on or about February 3, 1992, the Respondent agreed with the Union that the Respondent would discharge its arrearages; since that date the Respondent has subsequently failed and refused to make any payments towards the discharge of the aforementioned arrearages; and the contractual payments at issue involve mandatory subjects for collective bargaining. In its amended answer to the complaint, the Respondent admits the above factual allegations, but denies that its conduct violated the Act.

We find that there are no factual issues warranting a hearing because the Respondent has admitted all relevant factual allegations. We further find that the Respondent has not raised any valid defenses to the complaint's allegations that the Respondent's admitted conduct violated the Act. Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a corporation, with an office and place of business in Rockland, Massachusetts, is engaged in the fabrication and installation of sheet metal duct work. Annually, in the course and conduct of its business, the Respondent performs services valued in excess of \$50,000 in States other than the Commonwealth of Massachusetts. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

The following employees of the Respondent constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All employees of Respondent performing the work set out at Article 1, Section 1 of the collective bargaining agreement, but excluding all other employees, guards and supervisors as defined in the Act.

On December 28, 1989, the Union was certified as the exclusive collective-bargaining representative of employees in the above unit. Since that date the Respondent has recognized the Union's representative status. Such recognition has been embodied in successive collective-bargaining agreements, including one in effect from August 1, 1991, to July 31, 1992, and another in effect from August 1, 1992, to July 31, 1993. We find that, at all times material here, the Union has been the designated exclusive collective-bargaining representative of unit employees within the meaning of Section 9(a) of the Act. Since about November 28, 1991, the Respondent has failed and refused to make the required payments to the following funds set out in the parties' collective-bargaining agreements: (i) the pension fund and cola fund; (ii) the Local insurance fund; (iii) the Local training fund; and (iv) the annuity fund. In addition, since that same date, the Respondent has failed and refused to pay to the funds working dues checked off pursuant to article VIII and addenda 7 of the parties' collective-bargaining agreements. On about February 3, 1992, the Respondent agreed with the Union that the Respondent would pay all of its outstanding arrearages to the benefit funds. The Respondent has thereafter failed and refused to make any payments pursuant to its agreement to discharge the arrearages. The contractual provisions and payments at issue relate to the wages, hours, and other terms and conditions of employment of the unit employees. Consequently, they are mandatory subjects for the purposes of collective bargaining.

By the acts and conduct described above, the Respondent has failed and refused, and is failing and refusing, to bargain collectively with the representative of its employees. The Respondent has thereby engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

#### CONCLUSION OF LAW

By failing and refusing, since about November 28, 1991, to make contractually required benefit fund and to remit checked off dues to the funds, and by failing and refusing, since about February 3, 1992, to make any payments pursuant to an agreement to discharge benefit fund arrearages, the Respondent has failed and refused, and is failing and refusing, to bargain collectively with the representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to make whole its unit employees by discharging all arrearages in contractually required payments to the benefits funds.<sup>1</sup> In addition, we shall order the Respondent to reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, Presidential Sheet Metal, Inc., Rockland, Massachusetts, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Failing and refusing to bargain collectively with Local 17, Sheet Metal Workers International Associa-

tion, AFL-CIO, as the exclusive representative of the employees in the appropriate unit described below, by failing and refusing to make contractually required benefit fund payments. The appropriate unit is

All employees of Respondent performing the work set out at Article 1, Section 1, of the collective-bargaining agreement, but excluding all other employees, guards and supervisors as defined in the Act.

(b) Failing and refusing to pay to the funds working dues checked off pursuant to article VIII and addenda 7 of the collective-bargaining agreement.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole its unit employees by making all payments towards the discharge of arrearages in contractually required payments to the pension fund and cola fund, the Local insurance fund, the Local training fund, and the annuity fund, and by reimbursing the unit employees for any expenses ensuing from the Respondent's failure to make such payments, in the manner set forth in the remedy section of the decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, trust fund statements, and all other documents or records necessary to analyze the amount of fringe benefit payments due under the terms of this Order.

(c) Post at its facility in Rockland, Massachusetts, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

<sup>1</sup> Because the provisions of employee benefit fund agreements are variable and complex, we leave to the compliance stage the question of whether the Respondent must pay any additional amounts into the benefit funds in order to satisfy our make-whole remedy. *Merryweather Optical Co.*, 240 NLRB 12, 13 (1979).

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. April 5, 1993

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James M. Stephens, Chairman

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Dennis M. Devaney, Member

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John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to bargain collectively with Local 17, Sheet Metal Workers International Association, AFL-CIO as the exclusive representative of our employees in the appropriate unit described below, by failing and refusing to make contractually required benefit fund payments. The appropriate unit is:

All of our employees performing the work set out at Article 1, Section 1 of the collective bargaining agreement, but excluding all other employees, guards and supervisors as defined in the Act.

WE WILL NOT fail and refuse to pay to the funds working dues checked off pursuant to article VIII and addenda 7 of the collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole our employees in the unit described above by making all payments towards the discharge of the arrearages in contractually required payments to the pension fund, Local insurance fund, Local training fund, and annuity fund, and by reimbursing our unit employees, with interest, for any expenses ensuing from our failure to make such payments.

PRESIDENTIAL SHEET METAL, INC.